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16 RUSS FLORES and MARILEE  
17 ALAMILLA

18

19 UNITED STATES DISTRICT COURT  
20 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

21 LUIS PACHECO,

22 Plaintiff,

23 v.

24 COSTCO WHOLESALE  
25 CORPORATION, CHRIS MARMON,  
26 RUSS FLORES, MARILEE  
27 ALAMILLA, and DOES 1 through 100,  
28 inclusive,

29 Defendants.

30 Case No. 5:22-cv-1405

31 **NOTICE OF REMOVAL OF CIVIL  
32 ACTION**

33 [San Bernardino Superior Court  
34 Case No. CIVSB2206722]

35 [Complaint filed: March 29, 2022]

1                   TO THE UNITED STATES DISTRICT COURT, CENTRAL  
2 DISTRICT OF CALIFORNIA:

3  
4                   PLEASE TAKE NOTICE that defendant Costco Wholesale  
5 Corporation (“Costco”) hereby removes the matter of *Luis Pacheco v. Costco*  
6 *Wholesale Corporation, Chris Marmon, Russ Flores, Marilee Alamilla, and DOES*  
7 *1 to 100, inclusive* to the United States District Court, Central District of California,  
8 on the grounds that it is a civil action wherein the amount in controversy exceeds the  
9 sum of \$75,000 and is between citizens of different states, and that the individual  
10 defendants are fraudulently named and must be disregarded for purposes of  
11 establishing diversity.

12  
13                  In accordance with 28 U.S.C. section 1446(a), the following is a short  
14 and plain statement of the grounds for removal of the case and a listing of pleadings  
15 to date.

16  
17                  1.       On March 29, 2022, plaintiff Luis Pacheco (“Plaintiff”) filed a  
18 Complaint against Defendants Costco Wholesale Corporation, Chris Marmon, Russ  
19 Flores and Marilee Alamilla in the Superior Court. Costco Wholesale Corporation  
20 was served with the Complaint on May 11, 2022; Marilee Alamilla was served with  
21 the Complaint on May 17, 2022; Russ Flores was served with the Complaint on  
22 June 7, 2022; and Chris Marmon was served with the Complaint sometime in June  
23 2022. A copy of the Complaint is attached as Exhibit A to the Declaration of  
24 Matthew S. McConnell.

25  
26                  2.       On June 10, 2022, Costco filed its Answer to Plaintiff’s  
27 Complaint; on June 16, 2022 Marilee Alamilla filed her Answer to Plaintiff’s  
28 Complaint; on July 6, 2022 Russ Flores filed his answer to Plaintiff’s Complaint;

1 and on July 26, Chris Marmon filed his answer to Plaintiff's complaint. A copy of  
2 each Answer is included in Exhibit C to the Declaration of Matthew S. McConnell.  
3

4           3. Attached as Exhibit B to the Declaration of Matthew S.  
5 McConnell is a list of the Superior Court's file in this matter.  
6

7           4. Attached as Exhibit C to the Declaration of Matthew S.  
8 McConnell are copies of all documents in the Superior Court's file with the  
9 exception that the Complaint is attached separately as Exhibit A.  
10

11           5. The United States District Court for the Central District of  
12 California embraces San Bernardino, the county in which this Action is brought.  
13 Therefore, the Court is a proper venue for this Action under 28 U.S.C. sections  
14 84(c)(2) and 1441(a).  
15

16           6. *Timely Filing of Notice.* Costco has filed this Notice pursuant to  
17 28 U.S.C. section 1446(b) in a timely fashion, in that this Notice has been filed  
18 within 30 days of receipt of an "other paper from which it may first be ascertained  
19 that the case is . . . removable." 28 U.S.C. § 1446(b). For purposes of this statute,  
20 Plaintiff's deposition testimony given on June 27, 2022, and the corresponding  
21 transcript of his deposition testimony received on July 11, 2022, is considered to be  
22 an "other paper" which triggers removal. *See Dietrich v. Boeing Co.*, 14 F.4th 1089,  
23 1085 (9th Cir. 2021) (holding that removal under Section 1446(b) is timely if filed  
24 within 30 days of receiving the certified deposition transcript upon which removal is  
25 based). Because this Notice has been filed within 30 days of July 11, 2022, the date  
26 on which Costco received the deposition transcript from Plaintiff's deposition, this  
27 Notice is timely.  
28

1           7.     *Diversity Jurisdiction:* This Court has original jurisdiction over  
 2 this case pursuant to 28 U.S.C. section 1332, and removal is proper under 29 U.S.C.  
 3 section 1441(a) in that:

- 4           a.   For diversity purposes, a person is a “citizen” of the state in  
 5 which he is domiciled. *See Kantor v. Wellesley Galleries, Ltd.*,  
 6 704 F.2d 1088, 1090 (9th Cir. 1983). A party’s residence is  
 7 *prima facie* evidence of his or her domicile. *See State Farm Mut.*  
 8 *Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994).  
 9 Plaintiff is a citizen of the State of California. The Complaint  
 10 alleges that Plaintiff is a resident of the State of California.  
 11 (Complaint, ¶ 1.) In addition, plaintiff testified that he was born  
 12 in California, has lived in California his entire life, and has no  
 13 intention of leaving California. (Ex. D to McConnell Decl.  
 14 (Pacheco Depo.), 234:11-20.)
- 15
- 16           b. Pursuant to 28 U.S.C. section 1332(c), “a corporation shall be  
 17 deemed to be a citizen of any State by which it has been  
 18 incorporated and of the State where it has its principal place of  
 19 business.” Costco was at the time of the filing of this action and  
 20 still is a citizen of the State of Washington, where it has its  
 21 principal place of business and where it is incorporated. (Ex. E  
 22 to McConnell Decl., ¶ 9; Rajske Decl., ¶¶ 4-5.) Costco’s  
 23 corporate headquarters and executive offices are located in  
 24 Issaquah, Washington. (Rajske Decl., ¶ 5.) Costco’s corporate  
 25 policies and procedures are formulated in its corporate  
 26 headquarters in Issaquah, Washington. (Rajske Decl., ¶ 5.) The  
 27 “nerve center” of Costco is therefore found in Washington, not  
 28 California. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1186 (2010)

1 (“the phrase ‘principal place of business’ refers to the place  
2 where the corporation’s high level officers direct, control, and  
3 coordinate the corporation’s activities. Lower federal courts have  
4 often metaphorically called that place the corporation’s ‘nerve  
5 center.’”).

- 6
- 7 c. The citizenship of the individually named defendants Chris  
8 Marmon, Russ Flores and Marilee Alamilla (collectively,  
9 “Individual Defendants”) should be disregarded for removal  
10 purposes because each is a sham defendant fraudulently named  
11 by Plaintiff in this action. *See Morris v. Princess Cruises, Inc.*,  
12 236 F.3d 1061, 1067 (9th Cir. 2001) (holding that a non-diverse  
13 party (plaintiff or defendant) named in the state court action may  
14 be disregarded if the federal court determines that party’s joinder  
15 is a “sham” or “fraudulent” so that no possible cause of action  
16 has been stated against that party); *McCabe v. Gen. Foods Corp.*,  
17 811 F.2d 1336, 1339 (9th Cir. 1987) (“Fraudulent joinder is a  
18 term of art. If the plaintiff fails to state a cause of action against a  
19 resident defendant, and the failure is obvious according to the  
20 settled rules of the state, the joinder of the resident defendant is  
21 fraudulent.”).

- 22
- 23 d. The Individual Defendants are fraudulently joined and are sham  
24 defendants because Plaintiff’s deposition testimony on June 27,  
25 2022 makes clear that he cannot maintain either of the two  
26 causes of action he has pled against them as a matter of law,  
27 specifically either Plaintiff’s seventh cause of action for  
28 intentional infliction of emotional distress (“IIED”) or Plaintiff’s

1 eighth cause of action for failure to provide rest periods, as  
2 shown below.

- 3
- 4 e. The IIED cause of action fails against each of the Individual  
5 Defendants for two primary reasons. First, the IIED claim is  
6 preempted by the exclusivity provisions of the Workers'  
7 Compensation Act ("WCA"), which provides that where  
8 workers' compensation is available to an employee, "the right to  
9 recover such compensation is ... the sole and exclusive remedy  
10 of the employee ... against the employer." Cal. Lab. Code §  
11 3602. This provision covers "any injury ... arising out of the  
12 employment," including "purely emotional" injuries. *Livitsanos*  
13 *v. Super. Ct.*, 2 Cal.4th 744, 747-56 (1992). If the injury arises  
14 out of the employment relationship, "claims for intentional ...  
15 infliction of emotional distress are preempted by the [WCA]."  
16 *Id.* at 747. Layoffs, closures, and terminations are a normal part  
17 of the employment relationship and do not insulate a cause of  
18 action from the WCA's exclusive remedy provisions. *See, e.g.,*  
19 *Aviles v. Alutiiq Sec. & Tech.*, 2012 WL 12905874, at \*7 (S.D.  
20 Cal. June 15, 2012) (IIED claim based on disability  
21 discrimination barred by WCA where alleged conduct amounted  
22 to personnel management activity); *Plummer v. Tesoro Ref. &*  
23 *Mktg. Co.*, 2016 WL 3180327, at \*4 (C.D. Cal. June 3, 2016)  
24 (IIED claim based on age harassment preempted by WCA where  
25 underlying acts of giving negative performance review and  
26 denying request for leave "occurred during the course of the  
27 employer-employee relationship"); *Shoemaker v. Myers*, 52

Cal.3d 1, 25 (1990) (affirming dismissal of an IIED claim based on the WCA).

f. Second, even if the IIED claim was not preempted and could be brought civilly, Plaintiff's deposition testimony establishes that none of the Individual Defendants engaged in any extreme or outrageous conduct as required by law. *See Conley v. Roman Catholic Archbishop of San Francisco*, 85 Cal.App.4th 1126, 1133 (2000) (holding that a claim for intentional infliction of emotional distress must consist of "extreme and outrageous" conduct with the intent to cause, or reckless disregard of causing, emotional distress); *Fowler v. Varian Assocs., Inc.*, 196 Cal.App.3d 34, 44 (1987) (stating that in order to prevail on a claim for intentional infliction of emotional distress, the conduct must be "so extreme and outrageous as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community."); *see also Alcorn v. Anbro Eng., Inc.*, 2 Cal.3d 493, 499 (1970). Indeed, when asked whether any Costco employees caused him emotional distress during his employment, Plaintiff *did not* identify any of the Individual Defendants in response. (Ex. D to McConnell Decl. (Pacheco Depo.), 200:22-204:3.) Plaintiff's testimony is summarized below as to each Individual Defendant:

(1) Defendant Chris Marmon: At deposition, Plaintiff testified to a single interaction with Marmon, during which Marmon handed Plaintiff a counseling notice indicating that Plaintiff was being suspended for three days pending

1 review of his employment based on potentially violating  
2 Costco's sexual harassment policy. (Ex. D to McConnell  
3 Decl. (Pacheco Depo.), 144:14-149:25.) Plaintiff testified  
4 that he did not believe anything Marmon said or did  
5 during this interaction was improper. (Ex. D to  
6 McConnell Decl. (Pacheco Depo.), 149:20-25.)

- 7
- 8 (2) Defendant Russ Flores: At deposition, Plaintiff testified to  
9 two in-person interactions with Flores, and two phone  
10 calls. (Ex. D to McConnell Decl. (Pacheco Depo.), 119:9-  
11 166:21.) First, Plaintiff testified to being interviewed by  
12 Flores on May 12, 2021. (Ex. D to McConnell Decl.  
13 (Pacheco Depo.), 119:9-120:16.) During this interview,  
14 Flores told Plaintiff he was under investigation for sexual  
15 harassment. (Ex. D to McConnell Decl. (Pacheco Depo.),  
16 122:4-13.) Flores asked Plaintiff a series of questions  
17 about Plaintiff's relationship with two female employees.  
18 (Ex. D to McConnell Decl. (Pacheco Depo.), 123:14-18.)  
19 Flores instructed Plaintiff to write a statement. (Ex. D to  
20 McConnell Decl. (Pacheco Depo.), 123:6-14.) Once  
21 Plaintiff finished writing his statement, he briefly spoke to  
22 Flores, who told Plaintiff that they would call him to let  
23 him know the next steps. (Ex. D to McConnell Decl.  
24 (Pacheco Depo.), 135:20-136:18.) Second, Plaintiff  
25 testified that in mid-May 2021, Flores called him to ask  
26 him to come to the warehouse the next day for a meeting.  
27 (Ex. D to McConnell Decl. (Pacheco Depo.), 142:23-  
28 144:2.) Third, Plaintiff testified that Flores called him on

1 May 21, 2021, the last day of Plaintiff's suspension. (Ex.  
2 D to McConnell Decl. (Pacheco Depo.), 148:3-9.) Flores  
3 told Plaintiff to return to the warehouse on June 1, 2021,  
4 following the completion of Plaintiff's vacation. (Ex. D to  
5 McConnell Decl. (Pacheco Depo.), 148:15-149:10.)  
6 Fourth, Plaintiff testified that on June 1, 2021, he returned  
7 to the Costco warehouse and met with Flores for  
8 approximately ten to fifteen minutes. (Ex. D to  
9 McConnell Decl. (Pacheco Depo.), 158:25-159:24.)  
10 During this meeting, Flores handed Plaintiff a counseling  
11 notice and a termination form, both of which indicated  
12 Plaintiff's employment was terminated effective  
13 immediately for violation of Costco's sexual harassment  
14 policy. (Ex. D to McConnell Decl. (Pacheco Depo.),  
15 160:5-163:5.) Although Flores asked Plaintiff to sign the  
16 counseling notice and termination form, Plaintiff refused.  
17 (Ex. D to McConnell Decl. (Pacheco Depo.), 160:13-  
18 163:9.) Flores and another manager then escorted Plaintiff  
19 out of the building without saying anything to Plaintiff.  
20 (Ex. D to McConnell Decl. (Pacheco Depo.), 166:10-21.)

21  
22 (3) Defendant Marilee Alamilla: At deposition, Plaintiff  
23 testified to a single phone call with Alamilla. (Ex. D to  
24 McConnell Decl. (Pacheco Depo.), 140:16-141:11.)  
25 Specifically, the day after Plaintiff provided a statement to  
26 Costco regarding accusations that had been made against  
27 him, Alamilla called Plaintiff and informed him that he  
28 would be off of work for the next three days. (Ex. D to

1 McConnell Decl. (Pacheco Depo.), 140:16-25.) Alamilla  
2 explained that Plaintiff would be paid over the next three  
3 days, and she instructed Plaintiff to return back to work  
4 “when those three days were up.” (Ex. D to McConnell  
5 Decl. (Pacheco Depo.), 141:1-3.) Alamilla did not say  
6 anything else. (Ex. D to McConnell Decl. (Pacheco  
7 Depo.), 141:4-11.)  
8

9 g. Plaintiff’s deposition testimony as to each of the Individual  
10 Defendants depicts polite communications in the course of  
11 routine personnel actions. The Individual Defendants’ conduct  
12 cannot give rise to a claim for IIED, as such personnel decisions  
13 are routinely held *not* to constitute extreme and outrageous  
14 conduct as a matter of law. *See, e.g., Shoemaker*, 52 Cal.3d at 25  
15 (“discipline or criticism[] are a normal part of the employment  
16 relationship” and supervisor’s alleged comment he wanted to  
17 cause plaintiff “as much grief as possible” could not support  
18 emotional distress claim); *Janken v. GM Hughes Elecs.*, 46  
19 Cal.App.4th 55, 80 (1996) (“A simple pleading of personnel  
20 management activity is insufficient to support a claim of  
21 intentional infliction of emotional distress, even if improper  
22 motivation is alleged.”); *Franklin v. Adams & Assocs., Inc.*, 817  
23 F.App’x 505, 507 (9th Cir. 2020) (affirming the district court’s  
24 dismissal of IIED claim on the ground that the plaintiff “has  
25 alleged no conduct on the part of [defendant] other than acts of  
26 personnel management—conduct that California courts have  
27 deemed neither ‘extreme’ nor ‘outrageous,’ but ‘essential to the  
28

welfare and prosperity of society.”” (quoting *Janken*, 46 Cal.App.4th at 80).

h. Similarly, Plaintiff's eighth cause of action for failure to provide rest periods fails as against each of the Individual Defendants. Labor Code section 558.1 extends personal liability to an "owner, director, officer, or managing agent of the employer" who violates Labor Code section 226.7. Yet Plaintiff does not allege any facts to show that each of the three Individual Defendants is "an owner, director, officer, or managing agent" of Costco, which maintains hundreds of locations nationwide. *See Barajas v. Blue Diamond Growers Inc.*, 2022 WL 1103841, at \*6 (E.D. Cal. Apr. 13, 2022) (dismissing Labor Code claims against individual defendants because "Plaintiffs fail to allege facts sufficient to support a conclusion that Horn and Klair were 'managing agents' of Blue Diamond Growers, as necessary to invoke their liability under Section 558.1"). Nor can he. The Individual Defendants are not owners, directors, or officers of Costco, as Plaintiff alleges Marmon was the General Manager of the San Bernardino warehouse where he worked, and Flores and Alamilla were Plaintiff's supervisors and/or managers. (Complaint, ¶¶ 3-5.) Nor are the Individual Defendants managing agents of Costco, as they cannot create or determine company policy. *See White v. Ultramar, Inc.*, 21 Cal.4th 563, 566-67 (1999) (stating that the term "managing agent" includes "only those corporate employees who exercise substantial independent authority and judgment in their corporate decisionmaking so that their decisions ultimately determine

1 corporate policy.”). Not even Marmon, the General Manager of  
 2 the warehouse where Plaintiff worked, could qualify as a  
 3 managing agent, let alone Flores and Alamilla. *Cruz v.*  
 4 *HomeBase*, 83 Cal.App.4th 160, 168 (2000) (finding that the  
 5 store manager for one store within a larger chain of stores was  
 6 too low in the hierarchy to qualify as a managing agent for the  
 7 corporation). In any event, Plaintiff does not allege any facts  
 8 showing that Individual Defendants were “personally involved”  
 9 in the alleged violations, i.e. they “had some oversight of the  
 10 company’s operations or some influence on corporate policy that  
 11 resulted in Labor Code violations.” *Espinoza v. Hepta Run, Inc.*,  
 12 74 Cal.App.5th 44, 59 (2022); *see Rios v. Linn Star Transfer,*  
 13 *Inc.*, 2020 WL 1677338, at \*5-6 (N.D. Cal. Apr. 6, 2020)  
 14 (dismissing claims for violations of various Labor Code sections,  
 15 including Section 226.7, against individual defendants for failure  
 16 to plead facts to show individual defendants can be personally  
 17 liable pursuant to Section 558.1); *Plaksin v. NewSight Reality,*  
 18 *Inc.*, 2019 WL 4316255, at \*5 (C.D. Cal. Apr. 30, 2019)  
 19 (dismissing Labor Code claims against an individual defendant  
 20 because “allegations pertain[ed] only to [his] role as a corporate  
 21 officer,” and included no “allegation of individual wrongdoing”).  
 22 Thus, Plaintiff’s eighth claim cannot be maintained against any  
 23 of the Individual Defendants.

24  
 25 i. Where, as here, the record evidences demonstrates that there is  
 26 no basis for liability against the Individual Defendants, they are  
 27 deemed sham defendants, and the Court may disregard their  
 28 citizenship for purposes of determining removal jurisdiction.

1                  *Wilson v. Walt Disney Co.*, 2013 WL 12146125, at \*6 (C.D. Cal.  
2 Aug. 1, 2013) (when evidence clearly shows there is no basis for  
3 liability, the Court may disregard a non-diverse party as a sham  
4 defendant); *Ferrigno v. Philips Elecs. N. Am. Corp.*, 2009 WL  
5 10692955 (N.D. Cal. Nov. 5, 2009) (denying plaintiff’s motion  
6 to remand where plaintiff cannot state a claim against the sham  
7 defendant); *Chhabra v. Devry Univ., Inc.*, 2016 WL 406961, at  
8 \*1–2 (C.D. Cal. Feb. 2, 2016) (ordering plaintiff to show cause  
9 why individual defendants were not fraudulently joined, and  
10 ultimately denying plaintiff’s motion to remand, where plaintiff  
11 had admitted in his deposition that he had no facts to support his  
12 claims for defamation and infliction of emotional distress).

14                   j. The citizenship of defendants sued under fictitious names is  
15                   disregarded for purposes of removal. *See* 28 U.S.C. § 1441(a).

17           k. Although Plaintiff does not pray for a specific dollar amount, the  
18           Complaint pleads claims for sex/gender discrimination,  
19           retaliation, wrongful termination, negligent supervision,  
20           whistleblowing, intentional infliction of emotional distress,  
21           failure to provide rest periods, and failure to pay wages upon  
22           discharge. Assuming that Plaintiff's suit is successful, the  
23           amount in controversy requirement is clearly met. *See Jackson*  
24           *v. Am. Bankers Ins. Co.*, 976 F.Supp. 1450, 1454 (S.D. Ala.  
25           1997) ("[t]he appropriate measure [of the amount in controversy]  
26           is the litigation value of the case *assuming* that the allegations of  
27           the complaint are true and *assuming a jury returns a verdict for*  
28           *the plaintiff on all claims made in the complaint*") (emphasis

1 added); *Kenneth Rothschild Tr. v. Morgan Stanley Dean Witter*,  
2 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (amount in  
3 controversy is based on assumption that plaintiff prevails on all  
4 claims).

5  
6 1. Specifically, Plaintiff prays for the following:

7  
8 (1) Lost earnings (Complaint, ¶¶ 18, 28, 38, 46, 64, 72, 80,  
9 Prayer for Relief.) Plaintiff's hourly rate of pay as of June  
10 1, 2021 (the date Plaintiff alleges he was terminated) was  
11 \$19.00. (Rajski Decl., ¶ 3.) Plaintiff was a part time  
12 employee as of his termination, and was guaranteed to  
13 work at least 24 hours per week. (Ex. D to McConnell  
14 Decl. (Pacheco Depo.), 58:3-20.) Assuming that Plaintiff  
15 prevails at trial within one year of his filing of the  
16 Complaint (which is approximately March 29, 2023),  
17 Plaintiff would potentially be entitled to 22 months of  
18 back wages by then, or \$43,472 in backpay. (McConnell  
19 Decl., ¶ 7; *see also Parker v. Twentieth Century-Fox Film*  
20 *Corp.*, 3 Cal. 3d 176, 181 (1970) (under FEHA, prevailing  
21 plaintiffs are entitled to backpay in the amount they would  
22 have received absent the termination). Plaintiff has also  
23 asked for interest on these wages. (Prayer for Relief.)  
24 This amount also does not include benefits or overtime.

25  
26 (2) Compensation for mental and emotional distress  
27 (Complaint, ¶¶ 19, 29, 37, 39, 46, 56, 63, 71, 80.) (*See Cal.*  
28

1 Gov't Code § 12970 (emotional distress damages  
 2 recoverable under FEHA).

- 3
- 4 (3) Punitive damages (Complaint, ¶¶ 20, 30, 49, 66, 74, 82.)  
 5 *See Weeks v. Baker & McKenzie*, 63 Cal. App. 4th 1128,  
 6 1147-48 (1998) (punitive damages recoverable under  
 7 FEHA actions); *Anthony v. Sec. Pac. Fin. Servs.*, 75 F.3d  
 8 311, 315 (7th Cir. 1996) (punitive damages factored into  
 9 amount in controversy if they are recoverable under state  
 10 law).
- 11
- 12 (4) Attorneys' fees (Complaint, ¶¶ 21, 31, 40, 48, 65, 73, 81,  
 13 98, Prayer for Relief.) *See* Cal. Gov't Code § 12965(b)  
 14 (authorizing courts to award attorneys' fees in FEHA  
 15 actions); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150,  
 16 1155 (9th Cir. 1998) (where attorneys' fees are allowed by  
 17 statute, they are considered as part of the amount in  
 18 controversy calculus).
- 19

- 20 m. The undersigned counsel has defended numerous claims for  
 21 alleged discrimination against corporate employers, including  
 22 claims alleging sex/gender discrimination, retaliation, and  
 23 wrongful termination. (*See* McConnell Decl., ¶ 8.) Based on  
 24 that experience, discovery and settlement discussions  
 25 consistently reveal that a typical claim in an action such as this  
 26 regularly exceeds \$75,000, especially when the plaintiff seeks to  
 27 recover attorneys' fees, as in this case. (*See* McConnell Decl., ¶  
 28 8.)

1                   n. Based on both Plaintiff's actual prayer for relief and the  
2 undersigned counsel's previous experience, Costco is informed  
3 and believes that the amount in controversy exceeds \$75,000.  
4                   *See White v. FCI USA, Inc.*, 319 F.3d 672, 675 (5th Cir. 2003)  
5 ("the lengthy list of compensatory and punitive damages sought  
6 by [the plaintiff], when combined with attorney's fees,  
7 demonstrated that the amount in controversy exceeded  
8 \$75,000").

9  
10

11 Dated: August 9, 2022

12                   SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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By                 \_\_\_\_\_*/s/ Matthew S. McConnell*  
MATTHEW S. McCONNELL

Attorneys for WHOLESALE  
CORPORATION, CHRIS MARMON, RUSS  
FLORES and MARILEE ALAMILLA

## PROOF OF SERVICE

**Luis Pacheco v. Costco Wholesale Corporation, et al.**  
USDC, Central District of California, Case No. 5:22-cv-1405

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Diego, State of California. My business address is 12275 El Camino Real, Suite 100, San Diego, CA 92130-4092.

On August 9, 2022, I served true copies of the following document(s) described as **NOTICE OF REMOVAL OF CIVIL ACTION** on the interested parties in this action as follows:

## SERVICE LIST

10 Derek Tran  
Jorge Guardado  
Sandy Luu  
11 THE TRAN FIRM, APLC  
12 16152 Beach Boulevard, Suite 200  
Huntington Beach, California 92647  
13 Tel: (213) 528.-8858  
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15 [sandy@thetranfirm.com](mailto:sandy@thetranfirm.com)

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

23 Executed on August 9, 2022, at San Diego, California.

Janet E. Jackson